



MISSOURI DEPARTMENT OF MENTAL HEALTH

KEITH SCHAFER, DEPARTMENT DIRECTOR



DEPARTMENT
OPERATING
REGULATION
NUMBER

DOR
8.160

CHAPTER Regulatory Compliance	SUBCHAPTER HIPAA Regulation	EFFECTIVE DATE 7/1/09	NUMBER OF PAGES 3	PAGE NUMBER 1 of 3
SUBJECT HIPAA Sanctions		AUTHORITY 45 CSR Section 164 502 et seq	History See below	
PERSON RESPONSIBLE General Counsel			Sunset Date 7/1/12	

PURPOSE: This DOR will provide instructions regarding the Department of Mental Health's obligations relating to the HIPAA requirement for sanctions related to the user or disclosure of protected Health information (PHI).

APPLICATION: The Department of Mental Health, its facilities and workforce.

(1) **DEFINITIONS:** As used in this operating regulation, the following terms shall mean:

(A) **Appointing authority:** Head of the facility for employees of the facility, division director for division-wide employees, and department director for department-wide employees.

(B) **Designee:** An employee designated through policy, procedures or practice to act on the part of the Appointing Authority in certain matters.

(C) **Discipline:** A reprimand, suspension, involuntary demotion, or dismissal by the appointing authority for misconduct, a violation of department, division or facility rules, regulations, policies, procedures or practices or for deficiencies in performance.

(D) **Dismissal:** A separation from employment for disciplinary purposes.

(E) **Involuntary demotion:** An involuntary change for disciplinary purposes of an employee from a position in one class to a position in a class of lower rank.

(F) **Protected Health Information (PHI):** Individually identifiable health Information that is transmitted or maintained in any form or medium, by a covered entity, health plan or clearinghouse as defined under the Health Insurance Portability and Accountability Act (HIPAA), 45 CFR Part 160 and 164.

(G) **Individually Identifiable Health Information:** Any information, including demographic information, collected from an individual that –

1. is created or received by a healthcare provider, health plan, employer, or healthcare clearinghouse; and

2. related to the past, present, or future physical or mental health or condition of an individual; the provision of healthcare to an individual; or the past, present, or future payment for the provision of healthcare to an individual, and

a. identifies the individual, or

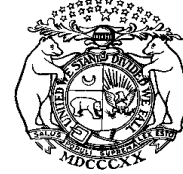
b. there is reasonable basis to believe that the information can be used to identify the individual.

(H) **Reprimand:** A disciplinary action in the form of a letter or memorandum to an employee notifying the employee of misconduct, violations of department, division or facility rules, regulations, policies, procedures or practices, or for deficiencies in



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performance, and the consequences of further misconduct, violations, or deficiencies in performance.

(I) Supervisor: The rater of employee on the performance plan and appraisal.

(J) Suspension: An enforced leave of absence without pay for disciplinary purposes.

(K) Verbal counseling: An oral discussion by a supervisor with an employee about misconduct, violations of rules, regulations, policies, procedures or practices, or deficiencies in performance.

(L) Written counseling: An official memorandum from an employee's supervisor about misconduct, violations of rules, regulations, policies, procedures or practices, or deficiencies in performance.

(M) Workforce Members: Employees, volunteers, trainees, and other persons whose conduct, in the performance of work for the department, its offices, programs or facilities, is under the direct control of the department, office, program or facility, regardless of whether they are paid by the entity.

(2) PROCEDURE

(A) The Department of Mental Health, its facilities and its workforce, shall utilize the following disciplinary actions for any possible violations of the HIPAA DORs set out in Chapter 8 of the DORs. Please note that all applicable provisions of DOR 6.050 shall also be followed in the application of this DOR.

(B) Any employee who has failed to comply or assure compliance with any HIPAA related DOR shall have a verbal counseling for the first violation. The supervisor responsible for the verbal counseling may also require that the employee review certain portions of the required HIPAA workforce training curriculum as part of the remediation process. Such verbal counseling shall be placed in the employee's personnel file and a copy forwarded to the facility privacy officer.

(C) Any employee who has failed to comply or assure compliance with any HIPAA related DOR, and who has already received a prior verbal counseling shall receive a written counseling for the second violation. The supervisor responsible for the written counseling may also require, in agreement with the facility or central office privacy officer, that the employee be required to meet with the facility privacy officer for additional in-depth privacy training. The completion of such training shall be documented in the employee's personnel file. The written counseling shall be placed in the employee's personnel file and a copy forwarded to the facility privacy officer.

(D) Any employee who has failed to comply or assure compliance with any HIPAA related DOR but who has already completed subsections (2)(B) and (C), of this DOR, shall receive a reprimand for the third violation. Such reprimands shall also include provisions for additional HIPAA privacy trainings. The reprimand shall be placed in the employee's personnel file and a copy forwarded to the facility privacy officer.

(E) Any employee who has failed to comply or assure compliance with any HIPAA related DOR, but who has already completed subsections (2)(B),(C) and (D), of this DOR, shall receive a one-day suspension for the fourth violation. If it is an employee who is not eligible for a suspension, then an unacceptable conduct notice shall be



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utilized. The notice of suspension shall be placed in the employee's personnel file and a copy forwarded to the facility privacy officer.

(F) Any employee who has failed to comply with any HIPAA related DOR and who has completed subsections (2) (B), (C), (D) and (E) shall be subject to dismissal. The notice of dismissal shall be placed in the employee's personnel file and a copy forwarded to the facility privacy officer.

(G) If, for the good of the service, the Appointing Authority determines that a violation warrants a higher level of discipline than the progressive steps set forth in (2) (B), (C), (D) and (E), then the Appointing Authority may skip one or more steps and impose the level of discipline deemed appropriate to address the particular violation.

(H) Any employee who has knowingly disclosed protected health information maliciously or for personal gain shall be subject to dismissal. Any employee who is found to have sold lists of consumer names or protected health information shall be subject to dismissal. Any employee who has accessed consumer records for personal gain or with malicious harm shall be subject to dismissal. Any employee who has negligently failed to comply with any HIPAA related Department Operating Regulation by disclosing protected health information that results in harm to the consumer, the facility, or DMH, may be subject to dismissal. In addition, any employee who knowingly and willingly tampers with or allows unapproved access to any DMH computer system shall be subject to dismissal.

(I) Any employee who sends PHI in an e-mail without following the procedures outlined in DOR 8.340 shall be subject to disciplinary action as set forth in (2)(B), (C), (D), (E) and (F).

(J) All occasions of noncompliance as set forth above shall be defined as failure to comply or assure noncompliance within a floating 12 month period.

(3) NO LOCAL POLICIES: There shall be no local policies on this topic. The Department Operating Regulation shall control.

(4) SANCTIONS: Failure to comply or assure compliance with this DOR shall result in disciplinary action, up to and including dismissal.

(5) REVIEW PROCESS: The Central Office Privacy Officer shall collect information from the facility Privacy Officers during the month of April each year to monitor compliance with this DOR.

HISTORY. Emergency DOR effective April 14, 2003, expires October 15, 2003. Final DOR effective July 1, 2003. Amendment effective July 1, 2006. On July 1, 2009, the sunset date was extended to July 1, 2012.